

SERVICE DATE - APRIL 26, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-565 (Sub-No. 4X)¹

NEW YORK CENTRAL LINES, LLC—ABANDONMENT EXEMPTION—
IN VERMILLION AND WARREN COUNTIES, IN

Decided: April 24, 2002

New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT) (collectively, applicants) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service for NYC to abandon and CSXT to discontinue service over approximately 6.12 miles of railroad between milepost QSO-5.18 near the Illinois/Indiana State line and milepost QS0-11.30 near Olin, in Vermillion and Warren Counties, IN. Notice of the exemption was served and published in the Federal Register on September 28, 2001 (66 FR 49741-42). Under 49 CFR 1152.50(d)(3), the exemption was scheduled to become effective on October 30, 2001, but on October 11, 2001, Flex-N-Gate Corporation (Flex) late-filed a notice of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1) to purchase the entire line.²

On January 28, 2002, Flex timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the entire line. By decision served January 31, 2002, the Board further postponed the effective date of the exemption in order to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed. Also, the January 31, 2002 decision identified

¹ The notice of exemption served September 28, 2001, embraced STB Docket No. AB-55 (Sub-No. 597X), CSX Transportation, Inc.—Discontinuance of Service Exemption—in Vermillion and Warren Counties, IN.

² On October 15, 2001, applicants filed a request for a 60-day extension, in accordance with 49 CFR 1152.27(c)(2)(ii)(D), to develop and submit the required information requested by Flex. By decision served October 29, 2001, the proceeding was reopened, Flex's late-filed notice of intent was accepted, and the due date for Flex to file its OFA was established as December 28, 2001, and the effective date was further postponed to January 7, 2002. The October 29 decision also imposed several environmental conditions and provided that the requests for issuance of a notice of interim trail use under the National Trail System Act, 16 U.S.C. 1247(d), and for a public use condition under 49 U.S.C. 10905, would be held in abeyance pending completion of the OFA process. On December 18, 2001, Flex filed a petition to toll the 30-day period for submitting its OFA until January 28, 2002. By decision served December 21, 2001, the time period for Flex to file its OFA was extended until January 28, 2002, and the effective date of the exemption was extended until February 7, 2002.

February 27, 2002, as the date on or before which the buyer or seller could request the Board to establish the terms and conditions for purchase of the line. At the request of Flex, with CSXT's acquiescence, the time period for filing requests for the establishment of terms and conditions was extended to April 29, 2002, by decisions served February 26, 2002, and March 22, 2002.

On April 22, 2002, Flex and CSXT filed a joint a motion for an additional 60-day extension (until June 28, 2002), of the deadline for filing requests for the establishment of terms and conditions. The parties state that they are continuing to negotiate in good faith a purchasing and operating agreement, and that the oral agreement reached by the parties regarding the purchase price remains intact, but that additional time is needed to negotiate and properly structure various aspects of the purchase and operating agreements.

In view of Flex's and CSXT's request, the deadline for the parties to request the Board to establish terms and conditions for the purchase will be extended to June 28, 2002.³

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The joint request to extend the time period for either party to request the Board to establish the terms and conditions of the purchase is granted.
2. If CSXT and Flex cannot agree on the purchase price, either party may request the Board to establish the terms and conditions of the purchase on or before June 28, 2002.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

³ In the January 31, 2002 decision, it was stated that any person filing a request to set terms and conditions must pay the requisite filing fee set forth at 49 CFR 1002.2(f)(26), which as of April 8, 2002, is set at \$16,700.